

US EPA ARCHIVE DOCUMENT



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

NOV 14 2011

Mr. Robert E. Williams, Jr.
145 Sandy Lane
Moorefield, West Virginia 26836

Re: Administrative Order (CWA-03-2012-0024DN)

Dear Mr. Williams:

Enclosed is a Finding of Violation and Order for Compliance (the "Order") issued this date pursuant to Section 309(a) of the Clean Water Act (the "Act"), as amended, 33 U.S.C. § 1319(a). This Order contains a finding that you, as the owner and operator of the poultry grow-out facility located at 145 Sandy Lane, Moorefield, West Virginia 26836, have violated the Act and its implementing regulations by discharging pollutants from a concentrated animal feeding operation (CAFO) without a National Pollutant Discharge Elimination System (NPDES) permit.

You should carefully read the contents of the enclosed Order, and communicate to each responsible official, agent, or employee of your facility what actions each person must take to ensure compliance with its terms. This Order requires you to seek NPDES permit coverage from the West Virginia Department of Environmental Protection (WVDEP), and to submit to EPA a copy of your permit application. Failure to comply with the terms of this Order constitutes a violation of Section 309 of the Act, 33 U.S.C. § 1319, and may result in further enforcement action involving civil or criminal penalties.

You may qualify as a "small business" under the Small Business Regulatory Enforcement and Fairness Act (SBREFA). Please see the Small Business Information enclosure accompanying this letter. This enclosure provides information on contacting the SBREFA Ombudsman to comment on federal enforcement and compliance activities and also provides information on compliance assistance. As noted in the enclosure, any decision to participate in such a program or to seek compliance assistance does not relieve you of your obligation to respond in a timely manner to an EPA request or other enforcement action, create any new rights or defenses under law and will not affect EPA's decision to pursue this enforcement action. To preserve your legal rights, you must comply with all rules governing the administrative enforcement process. The Ombudsman and fairness boards do not participate in the resolution of EPA's enforcement action.



Please note that, as indicated by its terms, this Order is effective upon receipt. If you require any information or assistance regarding this Order, please contact Ashley Toy of my staff at 215-814-2774.

Sincerely,

A handwritten signature in black ink, appearing to read "Jon M. Capacasa", written over a horizontal line.

Jon M. Capacasa, Director
Water Protection Division

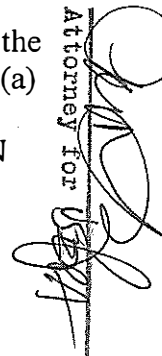
Enclosure

cc: Michael A. Zeto, DEP

BEFORE THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
 REGION III
 1650 Arch Street
 Philadelphia, Pennsylvania 19103-2029

RECEIVED
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 REGIONAL HEARING CLERK
 EPA REGION III PHILA. PA

_____ In The Matter of: Mr. Robert E. Williams, Jr. 145 Sandy Lane Moorefield, WV 26836 Respondent. _____	: : : : : : : : : : :	Proceeding under Section 309(a) of the Clean Water Act, 33 U.S.C. § 1319(a) Docket No. CWA-03-2012-0024DN FINDING OF VIOLATION AND ORDER FOR COMPLIANCE
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Attorney for Respondent


I hereby certify that the
 within is a true and correct copy
 of the original
 filed in this matter.

I. PRELIMINARY STATEMENT

1. This Finding of Violation and Order for Compliance (Order) is issued under the authority vested in the Administrator of the United States Environmental Protection Agency (EPA) by Section 309(a) of the Clean Water Act (CWA or the "Act"), 33 U.S.C. § 1319(a). The Administrator has delegated this authority to the Regional Administrator of EPA Region III, who has, in turn, delegated it to the Director of the Water Protection Division.

II. STATUTORY AND REGULATORY AUTHORITY

2. Section 301(a) of the Act, 33 U.S.C. § 1311(a), prohibits the discharge of any pollutant by any person except in compliance with, *inter alia*, Section 402 of the Act, 33 U.S.C. § 1342.
3. Section 402 of the Act, 33 U.S.C. § 1342, provides for the issuance of National Pollutant Discharge Elimination System (NPDES) permits which allow the discharge of pollutants under specified conditions.
4. Section 502(5) of the Act, 33 U.S.C. § 1362(5), defines the term "person" to mean "an individual, corporation, partnership, association, State, municipality, commission, or political subdivision of a State, or any interstate body."
5. Section 502(12) of the Act, 33 U.S.C. § 1362(12), defines the term "discharge of a pollutant" or "discharge of pollutants" to include any addition of any pollutant or combination of pollutants to waters of the United States from any point source.
6. Section 502(16) of the Act, 33 U.S.C. § 1362(16), defines the term "discharge" when used without qualification includes a discharge of a pollutant, and a discharge of pollutants.

7. Section 502(6) of the Act, 33 U.S.C. § 1362(6), defines the term “pollutant” to include “dredged spoil, solid waste, incinerator residue, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt and industrial, municipal, and agricultural waste discharged into water.”
8. Section 502(14) of the Act, 33 U.S.C. § 1362(14), defines the term “point source” to include “any discernible, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, well, discrete fissure, container, rolling stock, concentrated animal feeding operation...from which pollutants are or may be discharged.”
9. “Animal feeding operation” or “AFO” is defined by 40 C.F.R. § 122.23(b)(1) as a lot or facility where animals have been, are, or will be stabled or confined and fed or maintained for a total of 45 days or more in any twelve-month period, and (where) crops, vegetation, forage growth, or post-harvest residues are not sustained in the normal growing season over any portion of the lot or facility.
10. “Concentrated animal feeding operation” or “CAFO” is defined by 40 C.F.R. § 122.23(b)(2) as an AFO that is defined as a Large CAFO or Medium CAFO in accordance with 40 C.F.R. § 122.23(b)(4) or (6), respectively, or that is designated as a CAFO in accordance with 40 C.F.R. § 122.23(c).
11. “Medium CAFO” is defined at 40 C.F.R. § 122.23(b)(6)(i)(J) as an AFO that stables or confines 37,500 to 124,999 chickens (other than laying hens), if the AFO uses other than a liquid manure handling system,” and “either one of the following conditions are met: (A) Pollutants are discharged into waters of the United States through a man-made ditch, flushing system, or other similar man-made device; or (B) Pollutants are discharged directly into waters of the United States which originate outside of and pass over, across, or through the facility or otherwise come into direct contact with the animals confined in the operation.
12. “Waters of the United States” are defined by 40 C.F.R. § 122.2 to include, but not limited to, interstate waters and tributaries thereto.
13. “Manure” is defined by 40 C.F.R. § 122.23(b)(5) to include “manure, bedding, compost, and raw materials or materials commingled with manure or set aside for disposal.”
14. “Process wastewater” is defined by 40 C.F.R. § 122.23(b)(7) as water “directly or indirectly used in the operation of the AFO for any of the following: spillage or overflow from animal or poultry watering systems; washing, cleaning, or flushing pens, barns, manure pits, or other AFO facilities, direct contact swimming, washing, or spray control of animals; or dust control. Process wastewater also includes any water which comes into contact with any raw materials, products, or byproducts including manure, litter, feed, milk, eggs or bedding.”

15. Pursuant to 40 C.F.R. § 122.21, any person who discharges pollutants from a CAFO has a duty to submit a complete application as described in 40 C.F.R. § 122.23(d) which required permit coverage to be sought by February 27, 2009.
16. The West Virginia Department of Environmental Protection (WVDEP) is authorized by EPA to administer the NPDES Permit Program. EPA maintains concurrent enforcement authority with authorized states to address violations of the Act.

III. FACTUAL BACKGROUND

17. Robert E. Williams, Jr. (Respondent) is the owner and an operator of the poultry grow-out operation located at 145 Sandy Lane, Moorefield, WV 26836 (hereinafter referred to as “the Facility”). Coordinates at the entrance to the Facility are 39° 1’ 27.09” N, 78° 56’ 34.46” W.
18. On June 16, 2011, EPA representatives conducted a CWA inspection at the Facility.
19. Respondent raises chickens, specifically broilers, under contract with Pilgrim’s Pride.
20. The Facility includes, but is not limited to, four poultry houses which house a total of 107,000 broilers, a manure shed, and a compost shed. Grow-out operations rotate flocks in a manner that exceeds 45 days of confinement over any twelve-month period.
21. Poultry houses by design are enclosed, roofed structures where no crops, vegetation, forage growth, or post-harvest residues are sustained in the normal growing season over any portion.
22. During the inspection, EPA representatives observed man-made ditches near the poultry houses and other discrete conveyances, such as pipes, that direct stormwater runoff to a constructed on-site pond that is fed by a spring.
23. During the inspection, EPA representatives observed that the poultry houses were constructed to include poultry house ventilation system. Dust from the ventilation exhaust fans settles on the ground. Dust includes feathers and fine particulates of dander and manure which would therefore contain pollutants. Manure and other pollutants would come into contact with precipitation during rain events and generate process wastewater that is carried into the pond through the nearby man-made ditches and other discrete conveyances, and via sheet flow.
24. During the inspection, EPA representatives observed manure on the ground near the ends of the poultry houses, around the compost shed, and in front of the manure shed. The manure was exposed in a manner so that it would come into contact with precipitation during rain events and generate process wastewater that is carried into the pond through the nearby man-made ditches and other discrete conveyances, and via sheet flow.

25. The on-site pond is constructed with an outfall structure consisting of a pipe from the pond that directs flow into a swale that discharges to the South Fork South Branch Potomac River at the property line. At the time of the inspection, the outfall structure was discharging.
26. South Fork South Branch Potomac River is mapped as a perennial river on the USGS topographic map. South Fork South Branch Potomac River originates in the Commonwealth of Virginia; and, thus, is interstate waters.
27. According to the Southeast Regional Climate Center (<http://www.sercc.com/>), Moorefield Weather Station, West Virginia, located 3.2 miles southeast of the Facility, receives an annual average precipitation of 31.84 inches.
28. At the time of the inspection and date of the issuance of this Order, Respondent neither possessed nor had applied for an NPDES permit for the Facility.

IV. CONCLUSIONS OF LAW AND FINDINGS OF VIOLATION

29. Respondent is an individual and thus is a "person."
30. The Facility is an AFO as defined by 40 C.F.R. § 122.23(b)(1) that meets the definition of a Medium CAFO as defined by 40 C.F.R. § 122.23(b)(6)(J) and thus is a "point source."
31. The South Fork South Branch Potomac River is a "water of the U.S."
32. Respondent owns and operates a point source that is designed, constructed, operated, and maintained in a manner that has discharged pollutants from the pond to South Fork South Branch Potomac River without having obtained an NPDES permit.
33. Respondent is in violation of Section 301 of the Act and its implementing regulations at 40 C.F.R. § 122.21.

V. ORDER FOR COMPLIANCE

Therefore, this 14th day of November, 2011, Respondent is hereby ORDERED, pursuant to Section 309(a) of the Clean Water Act, 33 U.S.C. § 1319(a), to conduct the following activities:

34. **Within ninety (90) days** upon receipt of this Order, Respondent shall submit a complete permit application, including a site-specific Nutrient Management Plan (NMP), to WVDEP for NPDES permit coverage. A copy of all submitted documents shall also be sent to EPA.

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35. A copy of the permit and any correspondences regarding NPDES permit coverage for the Facility from DEP shall be submitted to EPA **within ten (10) days** upon Respondent receipt of such documents.
 36. Any information or correspondence submitted by Respondent to EPA under this shall be addressed to the following:

Ashley K. Toy
U.S. EPA Region III
1650 Arch Street (3WP42)
Philadelphia, PA 19103-2029

VI. NOTICE OF INTENT TO COMPLY

37. **Within ten (10) business days** of the effective date of this Order, Respondent shall submit to EPA a written notice indicating whether Respondent will comply with the Order.


VII. GENERAL PROVISIONS

38. Issuance of this Order shall not be deemed an election by EPA to forego any administrative, civil or criminal action to seek penalties, fines or any other appropriate relief under the Act for the violations cited herein. EPA reserves the right to seek any remedy available under the law that it deems appropriate for the violations cited. Failure to comply with this Order or the Act can result in a civil judicial action initiated by the U.S. Department of Justice. If EPA initiates such an action, Respondent will be subject to civil penalties of up to \$37,500 per day of violation pursuant to Section 309(g) of the Act, 33 U.S.C. § 1319(g).
39. If a criminal judicial action is initiated, and Respondent is convicted of a criminal offense under Section 309(c) of the Act, 33 U.S.C. § 1319(c), Respondent may be subject to a monetary fine and/or imprisonment and may become ineligible for certain contracts, grants or loans under Section 508 of the Act, 33 U.S.C. § 1368.
40. This Order does not constitute a waiver or modification of the terms or conditions of any NPDES permit. Compliance with the terms and conditions of this Order does not relieve the Respondent of his/her obligations to comply with any applicable federal, state, or local law or regulations.

VIII. EFFECTIVE DATE

41. The Order shall be effective upon receipt by Respondent.

Date: 11/14/2011


Jon M. Capacasa, Director
Water Protection Division